

## Message Text

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ACTION STR-05

INFO OCT-01 IO-13 ISO-00 STRE-00 AGRE-00 CEA-01  
CIAE-00 COME-00 DODE-00 EB-08 FRB-03 H-01 INR-07  
INT-05 L-03 LAB-04 NSAE-00 PA-01 AID-05 SS-15  
ITC-01 TRSE-00 PRS-01 SP-02 FEAE-00 OMB-01  
NSCE-00 SSO-00 USIE-00 INRE-00 AF-10 ARA-10 EA-10  
EUR-12 NEA-10 OIC-02 /131 W  
-----041214 111908Z /45

O 111755Z OCT 77  
FM USMISSION GENEVA  
TO SECSTATE WASHDC IMMEDIATE 1793

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USMTN

STR FOR ACTION STR PASS CODEL

E O 11652: NA  
TAGS: MTN, ETRD  
SUBJ: EC DRAFT GOVERNMENT PROCURMENT PROVISIONS

1. MTN DEL HAS RECEIVED EC DRAFT GOVERNMENT PROCURE-  
MENT PROVISIONS, APPROVED BY 113 COMMITTEE, ON TRANS-  
PARENCY, DISPUTE SETTLEMENT, AND SPECIAL AND DIFFER-  
ENTIAL TREATMENT (S&D). FOLLOWING ARE RELEVANT  
PORTIONS OF DRAFTS. (COMPLETE TEXTS SENT AIR MAIL/  
SPECIAL DELIVERY TO WASHINGTON.) THE NUMBERING OF  
THE PARAGRAPHS IS BASED ON THAT IN DOCUMENT MTN/NTM/W/81.

2. TRANSPARENCY -

(NOTE: FOR CONVENIENCE, VARIOUS PROVISIONS CON-  
CERNING THE PROCEDURES FOR THE AWARD OF CONTRACTS  
AND THE OBLIGATIONS PLACED ON PURCHASING ENTITIES,  
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AS WELL AS PROVISIONS RELATING TO UNDERTAKINGS  
HAVE BEEN BROUGHT TOGETHER UNDER THIS GENERAL  
HEADING).

1. THE FOLLOWING NEW SUB-PARAGRAPHS (3) AND (4)  
SHOULD BE ADDED AT THE END OF PARAGRAPH 18:

"(3) IN OPEN PROCEDURES, THE PURCHASING ENTITIES SHALL FORWARD THE SPECIFICATIONS AT THE REQUEST OF ANY UNDERTAKING PARTICIPATING IN THE PROCEDURE, AND SHALL REPLY TO ANY REQUEST FOR EXPLANATIONS RELATING THERETO, WITHIN SIX WORKING DAYS FOLLOWING RECEIPT OF THE REQUEST FOR THE SPECIFICATIONS, OR FOR EXPLANATIONS.

(4) IN SELECTIVE PROCEDURES, THE PURCHASING ENTITIES SHALL FORWARD THE SPECIFICATIONS AT THE REQUEST OF ANY PURCHASING ENTITY INVITED TO SUBMIT A TENDER, AND SHALL REPLY TO ANY REQUEST FOR THE EXPLANATIONS RELATING THERETO, WITHIN SIX WORKING DAYS FOLLOWING RECEIPT OF THE REQUEST FOR THE SPECIFICATIONS, OR FOR EXPLANATIONS.

2. A NEW SUB-PARAGRAPH (5) SHOULD BE ADDED AFTER SUB-PARAGRAPH (4) ABOVE:

"THE PURCHASING ENTITIES SHALL REPLY TO ANY REASONABLE REQUEST FOR RELEVANT INFORMATION SUBMITTED BY AN UNDERTAKING PARTICIPATING IN THE PROCEDURE WITHIN SIX WORKING DAYS FOLLOWING RECEIPT THEREOF, ON CONDITION THAT SUCH INFORMATION DOES NOT GIVE THAT UNDERTAKING AN ADVANTAGE OVER ITS COMPETITORS IN THE PROCEDURE FOR THE AWARD OF THE CONTRACT, LIMITED OFFICIAL USE

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AND TO THE EXTENT THAT THE PURCHASING ENTITY CONSIDERS THAT SUCH NOTIFICATION IS NOT DETRIMENTAL TO THE PROPER FUNCTIONING OF THE PROCEDURE".

3. PARAGRAPH 20 (PRESENTATION OF BIDS AND CANDITURES BY RAPID MEANS OF COMMUNICATION) SHOULD BE ENTIRELY AMENDED AND REDRAFTED AS FOLLOWS:

"(1) IF BIDS BY TELEX, TELEGRAM OR TELECOPY ARE PERMITTED, THE BID MADE THEREBY MUST INCLUDE ALL THE INFORMATION NECESSARY FOR THE EVALUATION OF THE TENDER, IN PARTICULAR THE DEFINITIVE PRICE PROPOSED BY THE BIDDER AND A STATEMENT THAT THE BIDDER AGREES TO ALL THE TERMS, CONDITIONS AND PROVISIONS OF THE INVITATION TO TENDER. ANY BID THAT DOES NOT INCLUDE SUCH A STATEMENT SHALL NOT BE TAKEN INTO CONSIDERATION. THE BID MUST BE CONFIRMED BY LETTER POSTED ON THE DAY ON WHICH THE TELEX, TELEGRAM OR TELECOPY IS SENT OR BY THE DESPATCH

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INT-05 L-03 LAB-04 NSAE-00 PA-01 AID-05 SS-15  
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ARA-10 EA-10 EUR-12 NEA-10 OIC-02 NSCE-00 SSO-00  
USIE-00 INRE-00 /131 W  
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OF A SIGNED COPY OF THE TELEX, TELEGRAM OR TELE-  
COPY.

BIDS PRESENTED BY TELEPHONE SHALL NOT BE PERMITTED".

"(2) THE CONTENT OF THE TELEX, TELEGRAM OR TELE-  
COPY SHALL PREVAIL WHERE THERE IS A DIFFERENCE  
OR CONFLICT BETWEEN THAT CONTENT AND ANY DOCU-  
MENTATION RECEIVED AFTER THE TIME LIMIT".

"(3) REQUESTS TO PARTICIPATE IN A SELECTIVE  
PROCEDURE MAY BE SUBMITTED BY TELEX, TELEGRAM  
OR TELECOPY. THEY MUST BE CONFIRMED BY LETTER".

4. AS A CONSEQUENCE OF THE NEW WORDING OF PARAGRAPH  
20, PARAGRAPH 26 SHOULD BE AMENDED AS INDICATED  
BELOW (THE PARTS AMENDED ARE UNDERLINED);

"BIDS MUST BE SUBMITTED SO AS TO BE RECEIVED  
IN THE OFFICE DESIGNATED IN THE TENDER NOT  
LATER THAN THE TIME SET FORTH IN THE TENDER.  
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IF A BID IS RECEIVED IN THE OFFICE DESIGNATED

IN THE TENDER AFTER THE TIME SPECIFIED IN THE TENDER, IT SHALL BE CONSIDERED IF, SENT BY MAIL OR, WHERE AUTHORISED, BY BEGIN UNDERLINE TELEX, TELEGRAM OR TELECOPY END UNDERLINE, IT WAS RECEIVED BY THE PURCHASING ENTITY AND EXCEPT FOR THE DELAY DUE SOLELY TO MISHANDLING ON THE PART OF THE ENTITY, WOULD HAVE BEEN RECEIVED AT THE OFFICE DESIGNATED BY THE TIME SPECIFIED IN THE TENDER; IT SHALL BE CONSIDERED IN OTHER CIRCUMSTANCES IF THE STANDARD REGULATIONS OF THE PURCHASING ENTITY SO PROVIDE".

5. A NEW SUBPARAGRAPH SHOULD BE ADDED TO THE END OF PARAGRAPH 27:

"A REPORT ON THE OPENING OF THE TENDERS SHALL BE DRAWN UP IN WRITING. THIS DOCUMENT SHALL NOT BE PUBLISHED IT SHALL REMAIN AT THE DISPOSAL OF THE GOVERNMENT AUTHORITIES RESPONSIBLE FOR THE PURCHASING ENTITY IN ORDER THAT IT MAY BE USED IF REQUIRED AT THE BILATERAL PHASE OF THE SETTLEMENT OF DISPUTES".

6. A SENTENCE SHOULD BE ADDED TO PARAGRAPH 13 (A) WHICH SHOULD NOW READ AS FOLLOWS:

"NO CONTRACT MAY BE DIVIDED WITH THE AM OF REMOVING IT FROM THE SCOPE OF THE PRESENT INSTRUMENT; IN THE CASE OF CONTRACTS OF A RECURRING NATURE, OR INTENDED TO BE RENEWED WITHIN A GIVEN PERIOD, THE SUM OF THE INITIAL SUPPLY AND OF THOSE MADE DURING THE TWELVE SUBSEQUENT LIMITED OFFICIAL USE

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MONTHS SHALL BE TAKEN AS A BASIS. IN THE CASE OF CONTRACTS OF A RECURRING NATURE, WHERE THE TOTAL VALUE OF PURCHASES TO BE MADE UNDER THOSE CONTRACTS IS LIKELY TO EXCEED THE THRESHOLD, THE FIRST NOTICE OF THE CONTRACT SHALL CONTAIN AN ESTIMATE OF THE VOLUME OF PURCHASES ENVISAGED IN THE FIRST YEAR."

3. DISPUTE SETTLEMENT - PARAGRAPH 40 (B) HAS BEEN REDRAFTED AS BELOW. IT MUST BE READ IN CONTEXT OF PARAGRAPHS 33 THROUGH 40 (C).

"40. (B) IN THE EVENT OF REPEATED DISPUTES OR ALLEGATIONS OF DISCRIMINATION IN A SPECIFIC PRODUCT AREA, THE CONSULTING GOVERNMENTS SHALL, UPON REQUEST, PROMPTLY SUPPLY THE INFORMATION NECESSARY FOR EXAMINATION OF THE CONTROVERSY,

INCLUDING AVAILABLE STATISTICAL INFORMATION ON  
THE PURCHASES IN QUESTION".

4. S&D - S AND D PROVISIONS ARE TOO LENGTHY TO BE  
TRANSMITTED BY CABLE. TEXT IN MAIL AND SUMMARY TO  
BE SENT SEPTEL.

5. IT IS UNLIKELY THAT ANY DEL WILL BE IN A POSITION  
TO OFFER DEFINITIVE COMMENTS ON THESE TEXTS AT OCTOBER  
17 MEETING. APPRECIATE HOWEVER ANY INITIAL COMMENTS  
YOU MAY HAVE. U.S. DEL COMMENTS WILL FOLLOW AFTER WE  
HAVE HAD TIME TO FULLY EXAMINE EC TEXTS.

6. DRAFTED BY SHELLEY. MCDONALD

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01-Jan-1994 12:00:00 am  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
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**Disposition Approved on Date:**  
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**Disposition Date:** 22 May 2009  
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**To:** STATE  
**Type:** TE  
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**Review Markings:**  
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